

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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GERARDO PAVON, et al.,

Plaintiffs,

-against-

JOE'S PIZZERIA, et al.,

Defendants.

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**MEMORANDUM AND ORDER/
REPORT AND RECOMMENDATION**

11-CV-4544 (KAM)

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

In response to a motion filed by plaintiffs' counsel on August 10, 2012, see Letter Motion to Withdraw As Attorney (Aug. 10, 2012), Electronic Case Filing ("ECF") Docket Entry ("DE") #41, this Court scheduled and held a hearing on that motion on September 20, 2012. See Scheduling Order (Aug. 10, 2012) ("8/10/12 Order"), DE #42; Minute Order (Sept. 20, 2012) ("9/20/12 Order"), DE #43. Although both plaintiffs were expressly warned that their failure to attend the proceeding would result in the granting of the motion to withdraw and sanctions such as dismissal of their claims, see 8/10/12 Order,¹ plaintiff Omar Juarez ("Mr. Juarez") failed to appear. See 9/20/12 Order at 2. Nevertheless, because plaintiff Gerardo Pavon ("Mr. Pavon") did appear and expressed his desire to continue to prosecute his claims, and because plaintiffs' counsel withdrew his motion to be relieved from representing Mr. Pavon, the Court declined at the time to recommend that Mr. Juarez's claim

¹ The 8/10/12 Order was docketed into the ECF system and copies were mailed to both plaintiffs at addresses provided to the Court by plaintiffs' counsel.

be dismissed and denied without prejudice counsel's motion to withdraw from representing Mr. Juarez. See id. at 1-2.

Thereafter, at a proceeding held on January 18, 2013, plaintiffs' counsel apprised the Court that Mr. Juarez had been ignoring various communications from him for more than a year. The Court thereupon directed Mr. Juarez to show cause, in writing, by January 28, 2013, why the case should not be dismissed for lack of prosecution. See Order to Show Cause (Jan. 18, 2013) DE #56. Mr. Juarez was expressly warned that, if the Court did not receive his response by January 31, 2013, his claims would be dismissed and his attorney's motion to withdraw would be granted. Id. at 2. A copy of the order was sent, along with a Spanish translation, to Mr. Juarez, via Federal Express, at his last known address, 168-14 89th Avenue, 1st Fl., Jamaica, New York 11432. Mr. Juarez has not responded to the Court's Order To Show Cause.²

Accordingly, Mr. Juarez has now ignored several court orders and has abandoned his claims and refused to cooperate with his attorney. Under these circumstances, the Court should no longer allow Mr. Juarez's claims to remain open.

Therefore, this Court hereby grants plaintiffs' counsel's motion to be relieved from representing Mr. Juarez and respectfully recommends that his claims be dismissed for lack of prosecution, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962).

² In the meantime, the parties have agreed to settle the claims of plaintiff Gerardo Pavon. See Letter Motion for Extension of Time to File Stipulation of Dismissal (Feb. 20, 2013), DE #57.

Any objections to the recommendations contained in this Memorandum and Order/Report and Recommendation must be filed with the Honorable Kiyo A. Matsumoto on or before **March 11, 2013**. Failure to file objections in a timely manner may waive a right to appeal the District Court order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a)(1), 72(b)(2); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to enter this Memorandum and Order/Report and Recommendation into the ECF system and to transmit a copy, via Federal Express, to Mr. Juarez at his last known address, along with a Spanish-language translation of this opinion.

SO ORDERED.

**Dated: Brooklyn, New York
February 22, 2013**

/s/ Roanne L. Mann
ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE